

**LFC Requester:****Aurora Sanchez**

**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**            
**Correction**           **Substitute**          

**Date**   1/8/2016  

**Bill No:**   HB 44  

**Sponsor:** William "Bill" R. Rehm

**Agency Code:**   305  

**Short**    DWI for Certain Drugs and

**Person Writing**    Jeres S. Rael, AAG

**Title:**    Interlocks

**Phone:** 505-629-9131 **Email** [jrael@nmag.gov](mailto:jrael@nmag.gov)

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Relationship: HB 74

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

HB 44 proposes to add "per se" levels for certain drugs/metabolites found in the blood of a driver to §66-8-102, NMSA 1978. In addition to adding "per se" levels, HB 44 also alters who will be required to install an ignition interlock device upon a conviction stemming from Section 66-8-102, NMSA 1978 by limiting it to convictions that stem from liquor/alcohol (thus excluding, drugs/metabolites). It should also be noted that HB 44 makes numerous grammatical reformat and/or deletions that may have an effect on its overall purpose/intent and/or may cause conflict with other laws.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

HB 44 removes "to a degree that renders the person incapable of safely driving a vehicle" from §66-8-102(B) leaving it as such;

    "It is unlawful for a person who is under the influence of any drug to drive a vehicle within the state."

The removal of this language could lead to the interpretation that if you are driving with any drug in your system you are in violation of §66-8-102(B). This could call into question the constitutionality of §66-8-102(B) and its overall purpose and intent.

While HB 44 removes the language listed above it also adds "per se" levels for nine (9) drugs/metabolites via a new section. In reviewing the above deletion in conjunction with the addition of the "per se" violations it is ambiguous as to what is now unlawful. It is unclear whether having any drug, at any level in your system, while driving unlawful or whether it is only unlawful, when you have one of the nine (9) drugs/metabolites in your blood, at/or above the "per se" level, within three hours of driving.

It should also be noted at this time, it is unclear how HB 44 arrived at the “per se” levels and/or if there was a scientific advisor on the “per se” levels.

HB 44 also limits who will be required to have an ignition interlock license when convicted under §66-8-102, NMSA 1978. HB 44 would only require convictions stemming from liquor/alcohol to obtain an ignition interlock license.

HB 44 also makes grammatical revisions/deletions to current §66-8-102 (N) and (O) that seem to be superfluous.

HB 44 may create a conflict within §66-8-110 because it removed “(1) eight one hundreds or more; or (2) four one hundredths or more if the person is driving a commercial vehicle”, from §66-8-110 (C) leaving it as such;

“The arresting officer shall charge the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration [or a controlled substance or metabolite concentration that is unlawful pursuant to the provisions of Section 66-8-102 NMSA 1978]

[Bracketed language is added by HB 44 but not the cause of the potential conflict]

HB 44, by removing the above mentioned language, now makes it that if a person has any alcohol concentration in their breath or blood they must be charged. This looks to conflict with §66-8-110(B). Because §66-8-110(B) states that if a person’s alcohol concentration is less than four one hundredths, that person is presumed not under the influence of intoxicating liquor. HB 44 thus improperly establishes that a person presumed not under the influence of intoxicating liquor must still be charged.

HB 44 also makes a similar deletion to §66-8-111 (C) as it did in §66-8-110 (C). This deletions may result in the Motor Vehicle Division having to revoke a person’s license if they have any alcohol concentration and just not for “per se” violations.

HB 44 also makes a similar deletion to §66-8-111.1 as it did in §66-8-111 (C). This deletions may result in a law enforcement officer issuing written notice of revocation of a person’s license if they have any alcohol concentration and just not for “per se” violations.

## **PERFORMANCE IMPLICATIONS**

**NA**

## **ADMINISTRATIVE IMPLICATIONS**

**NA**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relationship: HB 74

## **TECHNICAL ISSUES**

As stated in the significant issues sections HB 44’s grammatical revisions/deletions may lead to internal statutory conflicts and improper consequences.

## **OTHER SUBSTANTIVE ISSUES**

**NA**

## **ALTERNATIVES**

**NA**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

## **AMENDMENTS**

**NA**